



OFFICE OF THE POLICE COMMISSIONER
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CHIAN

February 4, 2014

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Nicholas Konkowski**
Tax Registry No. 927044
Public Inquiry and Request Section
Disciplinary Case Nos. 2013-9558 & 2013-10873

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on November 25, 2013, was charged with the following:

DISCIPLINARY CASE NO. 2013-9558

1. Said Police Officer Nicholas Konkowski, while assigned to Highway District #3, on or about January 2, 2013, failed to conduct an investigation in that, having made a vehicle stop of a police officer who was driving erratically, did not evaluate said police officer for the possibility that he was driving while intoxicated.

P.G. 203-10, Page 1, Paragraph 4 & 5
P.G. 202-21, Page 1, Paragraph 8

GENERAL REGULATIONS
DUTIES AND RESPONSIBILITIES
NYS PENAL LAW 195.00(2)

2. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, failed to take police action in that he failed to arrest a Member of the Service who was driving while intoxicated.

P.G. 202-21, Page 1, Paragraph 8

POLICE OFFICER
DUTIES AND RESPONSIBILITIES

3. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, failed to notify a Patrol Supervisor or Platoon Commander about a Member of the Service who was driving under the influence of an intoxicant.

P.G. 202-21, Page 1, Paragraph 6

POLICE OFFICER
DUTIES AND RESPONSIBILITIES

4. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, failed to take police action after stopping a motorist who exhibited signs of driving while under the influence, to wit: he failed to conduct an investigation and, therefore, failed to make an arrest of a Member of the Service. (As amended)

P.G. 203-10, Page 1, Paragraph 4
P.G. 202-21, Page 1, Paragraph 8

GENERAL REGULATIONS
DUTIES AND RESPONSIBILITIES
NYS PENAL LAW 195.00(2)

POLICE OFFICER NICHOLAS KONKOWSKI

**DISCIPLINARY CASE NOS.
2013-9558 & 2013-10873**

5. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, after responding to the 112th Precinct at approximately 0215 hours to perform an Intoxicated Drivers Test of a Member of the Service who was involved in a motor vehicle accident at approximately 0053 hours in the vicinity of the Queens Boulevard and the Long Island Expressway, failed to notify the Department and disclose that on the same date, at approximately 0050 hours, Police Officer Konkowski made a traffic stop of a Member of the Service in the vicinity of Woodhaven Boulevard and the Long Island Expressway for driving erratically. (As amended)

P.G. 203-10, Page 1, Paragraph 4

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

DISCIPLINARY CASE NO. 2013-10873

1. Said Police Officer Nicholas Konkowski, while assigned to Highway 3, on June 4, 2013, did fail and neglect to appear at the Queens North Traffic Violations Bureau as required and as a result, five (5) summons, five (5) motorist, were dismissed.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

2. Said Police Officer Nicholas Konkowski, while assigned to Highway 3, on or about June 4, 2013, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said police officer did fail to submit a Leave of Absence Report (UF 28) for scheduled time not worked on June 4, 2013.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated December 13, 2013, Deputy Commissioner Karopkin accepted Police Officer Nicholas Konkowski pleading Guilty to Specification Nos. 1, 3, 4, and 5, and Dismissed Specification No. 2, in Disciplinary Case No. 2013-9558. Deputy Commissioner Karopkin also accepted Police Officer Nicholas Konkowski pleading Guilty to Specification Nos. 1 and 2 in Disciplinary Case No. 2013-10873. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

POLICE OFFICER NICHOLAS KONKOWSKI

**DISCIPLINARY CASE NOS.
2013-9558 & 2013-10873**

Police Officer Nicholas Konkowski's misconduct in this matter appears to be an aberration in an otherwise praiseworthy career. In light of Respondent's good performance history, the penalty will consist of the forfeiture of 30 vacation days. There will be no period of dismissal probation.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

December 13, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Nicholas Konkowski
Tax Registry No. 927044
Public Inquiry and Request Section
Disciplinary Case Nos. 2013-9558 & 2013-10873

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P.G. 203-10, Page 1, Paragraph 4 & 5 - GENERAL REGULATIONS
P.G. 202-21, Page 1, Paragraph 8 - DUTIES AND RESPONSIBILITIES
NYS PENAL LAW 195.00 (2)

2. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, failed to take police action in that he failed to arrest a Member of the Service who was driving while intoxicated.

P.G. 202-21, Page 1, Paragraph 8 - POLICE OFFICER
DUTIES AND RESPONSIBILITIES

3. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, failed to notify a Patrol Supervisor or Platoon Commander about a Member of the Service who was driving under the influence of an intoxicant.

P.G. 202-21, Page 1, Paragraph 6 - POLICE OFFICER
DUTIES AND RESPONSIBILITIES

COURTESY • PROFESSIONALISM • RESPECT

4. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, failed to take police action after stopping a motorist who exhibited signs of driving while under the influence, to wit: he failed to conduct an investigation and, therefore, failed to make an arrest of a Member of the Service. *(As amended)*

P.G. 203-10, Page 1, Paragraph 4 - GENERAL REGULATIONS

P.G. 202-21, Page 1, Paragraph 8 - DUTIES AND RESPONSIBILITIES

NYS Penal Law 195.00 (2)

5. Said Police Officer Nicholas Konkowski, assigned as indicated in Specification #1, on the date as indicated in Specification #1, after responding to the 112th Precinct at approximately 0215 hours to perform an Intoxicated Drivers Test of a Member of the Service who was involved in a motor vehicle accident at approximately 0053 hours in the vicinity of the Queens Boulevard and the Long Island Expressway, failed to notify the Department and disclose that on the same date, at approximately 0050 hours, Police Officer Konkowski made a traffic stop of a Member of the Service in the vicinity of Woodhaven Boulevard and the Long Island Expressway for driving erratically. *(As amended)*

P.G. 203-10, Page 1, Paragraph 4 - PUBLIC CONTACT-PROHIBITED

CONDUCT GENERAL REGULATIONS

Disciplinary Case No. 2013-10873

1. Said Police Officer Nicholas Konkowski, while assigned to Highway 3, on June 4, 2013, did fail and neglect to appear at the Queens North Traffic Violations Bureau as required and as a result, five (5) summons, five (5) motorist, were dismissed.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED

CONDUCT - GENERAL REGULATIONS

2. Said Police Officer Nicholas Konkowski, while assigned to Highway 3, on or about June 4, 2013, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said police officer did fail to submit a Leave of absence Report (UF-28) for scheduled time not worked on June 4, 2013.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED

CONDUCT - GENERAL REGULATIONS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by Stephen Worth, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9558

The Department had Dismissed Specification No. 2 prior to this proceeding. Respondent has pleaded Guilty to the remaining charges and is therefore found Guilty with regard to Specification Nos. 1, 3, 4, and 5.

Disciplinary Case No. 2013-10873

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent is thirty-eight years of age, married with two children ages ten and seven. He joined the Department on September 29, 2000. Respondent was assigned to the 63 Precinct after graduating from the academy. He performed patrol duties at the 63 Precinct for about seven and a half years. He then was assigned to Highway Patrol 3 in Queens. In relation to that assignment, he went for training in October or November of 2008.

Respondent was working in Highway District 3 on the date of this incident, January 2, 2013. On that night, he was assigned to Conditions/Intoxicated Driver Testing Unit (IDTU). The Queens IDTU is in the 112 Precinct. Respondent explained that if there were any need for an IDTU, he would respond and perform the test. He explained

that a supervisor might ask him to respond to a serious accident depending on the severity. Respondent explained that might be something that involved a full road closure or a tractor-trailer stuck under a bridge, something that would really inhibit traffic.

Respondent stated that at this time, he is familiar with the accident that off-duty Police Officer Isaac¹ had that night. He stated that that is not the type of accident that he would normally respond to the scene of.

Respondent agreed that he had stopped a driver who he now knows to be Isaac at about 0050 hours in the morning. Explaining what led to the stop, Respondent stated:

I saw --- observed a motorist cross over the white solid and striped lines getting onto the highway by Maurice Avenue, and then on the Long Island Expressway, I observed him unable to maintain his lane, and then, at which time, I conducted the car stop.

Respondent explained that erratic driving is not always the result of intoxicated driving. Respondent testified that over the years, he has stopped numerous vehicles that were being driven erratically which were not related to intoxicated driving. He noted that it could be that the driver dropped a cigarette or was playing with the radio. Some honest people have admitted that they were on the cell phone and distracted. Others have told him they were tired, on their way home from a vacation trip and that is why they were unable to maintain the lane. Respondent indicated that he does not perform a full intoxication examination on everybody he stops for erratic driving. He indicated that if he is satisfied, he sends them on their way.

At the time of this incident, he had been in Highway District 3 for about four and a half years. In that time, he has stopped and let drivers go on "numerous, if not hundreds of different occasions."

¹ Police Officer Wesam Isaac, Tax Number 944088.

When he stopped Isaac's vehicle, he approached the vehicle. They were on the outer roadway of the Long Island Expressway eastbound. Respondent described the stop:

I approached the vehicle. I asked him for his license and paperwork for the vehicle, which I would do. At that time, he was getting his ID out and in the midst of that, I asked him if everything was all right and he stated to me in sum and substance that he was tired, in a hurry to get home. At that time, the short interaction, he does present the ID...It was a New York City Police Department ID card. After being satisfied that, you know, he was, in fact, that member of the service on the ID showed me, at that point, I let my guard down and I told him to drive safe and get home safe and I went back to my car and ended my interaction with him.

When asked if he noticed any obvious signs of intoxication, Respondent testified:

None whatsoever. Even when he made the statement, it was actually a clear statement to me. He didn't have any slurred speech or anything like that, so I had no reason to believe that there was anything other than just a car stop.

Respondent said that he believed his interaction with Isaac lasted 26 or 27 seconds. He did not see Isaac pull away as he had gone back toward his car and shut the camera off. At that point Respondent left to get a signature in his Activity Log from his lieutenant.

At about 0210 or 0215 hours, he was notified to respond to the 112 Precinct. An off-duty member of service who he now knows to be Isaac was there for testing.

Respondent denied realizing that Isaac was the person he had stopped an hour and a half earlier.

Respondent explained that usually there is a camera technician and a technician who performs the test and the "intox." He explained that, "in a perfect world" there would be two people in the room trained to use the equipment. He also explained that

when a member of the service is involved there is also a boss in the room, and that the room is "full of bosses." Respondent said that was the case with Isaac.

Respondent explained that he was the only technician performing the test. He noted that Isaac refused to take the test and that it was on the videotape. He agreed that he has no way of knowing what Isaac's actual level of intoxication was.

Respondent testified, without referring to his paperwork, that Isaac had bloodshot eyes, a strong odor of alcoholic beverage on his breath. He did not remember what he noted about Isaac's steadiness on his feet.

Respondent explained how he was able to observe Isaac to be intoxicated at the IDTU and not during the stop:

Well, at the scene of the car stop, with the short interaction and no obvious signs at the scene, meaning I didn't smell alcohol, he didn't appear to be intox – I mean, he wasn't slurring his speech when he made the statement. There was no signs of him personally being intox at that scene. Now in the ID room, it's a room that's much, much smaller than this. It is a controlled, closed environment, okay, and it's already – in my opinion, I'm going there as the presumption that this person is going to be tested for intox. I have to observe him for at least 20 minutes, which I did, and during those 20 minutes, that's when I was able to give more of a better understanding of what exactly this person was acting like and why he was, and that's when I was able to, again, smell the alcohol, observe the eyes.

Respondent acknowledged that he did not notify any supervisor that night that he had stopped a member of the service earlier that night. When asked if he now realizes that he has to notify a supervisor if he stops a member of the service whether he makes an arrest or not Respondent stated: "If you are telling me that, yes."

On cross-examination Respondent stated that at that time his regular tour of duty would have been 2200 by 0635 hours. He believes that on the date of the

incident, January 2, 2013, that was his tour. Respondent testified that the number of car stops he made in a week averaged, "in the hundreds." The reasons for the stops included, no headlights, cracked windshield, taillights, speeding, unsafe lane changes, failure to maintain lanes and numerous other violations.

With regard to what could be the signs of a possible intoxicated drivers stops, Respondent said that there would be numerous examples such as high rate of speed, going very slowly, swerving, unable to maintain the lane, unsafe passing, jamming on the brakes. Respondent said that every stop is different but once he stopped someone he would normally ask for identification and paperwork for the vehicle. He said he usually would ask for an explanation for the behavior and if the story made sense, depending on the severity of the offense he might let the person go.

Respondent agreed that there were times when he did not believe the story. He said he would usually ask more questions. Respondent said that in his experience with car stops the person being questioned was inside the vehicle. Discussing how far down the car window would be rolled during a car stop, Respondent stated that sometimes the window would be open a crack and the abundance of the smell of alcohol would come through. He also said that sometimes there is a faint odor.

Respondent said that he would usually direct the person as to how far to roll down the window but he noted that if the window was rolled down three-quarters of the way where he could interact safely with them he would be comfortable with that. He said that it depends on the situation. Respondent noted, "I have interacted with people half up, three-quarters of the way down. It doesn't always have to be all the way down."

Respondent acknowledged that on January 2, 2013, Respondent had been assigned an unmarked Department vehicle, a black Dodge Charger. The vehicle was equipped with lights on the dashboard as well as a video/audio recorder (dash camera) and a siren. Respondent acknowledged that he also was equipped with a Portable Breath Test (PBT) that day.

Respondent agreed that he had stopped an off-duty police officer, later identified as Isaac, who had been driving a white sedan. He first noticed the vehicle in front of him on the service road near Maurice Avenue. He first noticed the vehicle as it went across an area that had white safety stripes, to get onto the Long Island Expressway, which is an infraction. Respondent said he then got behind the vehicle and he could not remember if there was a car in between them, but they got on the expressway heading east. Respondent did not recall exactly when he turned on the video camera but he noted that it goes back 30 seconds so that the video starts at Maurice Avenue. Respondent said there is a mile between Maurice Avenue and the exit they got off.

Explaining how the video works Respondent stated that if he turned on the camera at 0100 hours it would go back to 1259 hours and 30 seconds. If something happened at 1259 hours and 20 seconds, there would be nothing recorded.

Going back to his observations while following the white sedan, Respondent said the vehicle was going a little bit to the left lane then going back over to the right lane.

Respondent said he did not remember if he used his siren. Respondent said he might have near the end when they were getting off at the exit. Respondent did recall that he turned on his lights. Respondent agreed that the car did not immediately pull over but he did not recall the timeframe.

Respondent agreed that when the car stopped, he stopped directly behind it. He positioned the car so that he could safely walk up to the vehicle. He did not recall if the window was all the way down or not. Respondent agreed that when he asked for identification, Isaac showed him his Department identification card (ID). Respondent agreed that he saw that the ID matched the person he was talking to. Respondent agreed that when he was observing the driver, he saw his profile and that he did not stare directly at him. Respondent agreed that he did not look directly into his eyes.

At this point, it was stipulated by the parties that during his official Department interview, on January 18, 2013, Respondent had stated that he was "happy that the ID matched the motorist." When asked why he was "happy" about that, Respondent testified that he did not know what the wording of the question was during the interview and that he did not recall why he would say that he was "happy" about this. Respondent stated that he had not been "gleefully" happy but yes he was happy that the ID matched the person. Respondent said he did not recall the name on the ID card. Respondent said that after he saw the ID card, within a couple of seconds, he told the driver to get home safe and then he went back to his vehicle.

Respondent did recall asking the driver if he would be all right to get home but said he believed that was before "when I asked him if everything was all right, and that's when he said he was in a hurry or he was in a rush to get home, he was tired --- one of those, in that terminology."

Respondent agreed that he did not ask the driver to get out of the vehicle at any point nor did he administer the portable breathalyzer test.

Respondent testified that he was with the lieutenant in the Highway District 3 base. The lieutenant told him that there was a member of the service under arrest for Driving While Intoxicated (DWI) at the 112 Precinct and needed an "ID job." Respondent was not provided with any additional information at that time but he noted that, if anything, he would have been provided with the arrest time.

Respondent denied getting additional information when he arrived at the 112 Precinct nor was he aware that the individual had been involved in an accident. Respondent agreed that at some point, while he was at the 112 Precinct he was made aware that there had been an accident but did not know the exact location. Respondent stated that there was a female sergeant who had made the arrest and she needed help with the paperwork. She asked him for help with the paperwork. Respondent stated:

That's how I knew it was an accident. I have to put it in the intoxilyzer that there was an accident, if there were any injuries, but the specific location and being notified, no.

Respondent testified that when he got to the 112 Precinct, the motorist was already there. He had to prepare paperwork and since he was the only technician there, he had to set up the laptop which runs the camera. He stated that there is also a log to be filled out and he had to set up the intoxilyzer to go through its self checks.

Respondent explained that once that is all setup, the motorist is brought into the room where there is a 20 minute observation period during which he had to make sure that the motorist does not eat or drink anything which would compromise the test.

Respondent further explained that after the observation period is over, the motorist stands up in front of a wall. Somebody, he said, would then turn on the camera. Respondent explained that because he was the only person there he had to do that. He

then had to walk back over to the motorist. He said that there is a "whole instruction sheet" which is read to the motorist which informs him why he is there. They then take the test with the intoxilyzer. If they refuse, he reads the refusal warnings, explaining what happens if they refuse. After that, there is a coordination test. They are asked if they would like to take the test. At the end they are asked to state their name, address and age.

Respondent estimated that from the time he first saw Isaac during the car stop to the time he encountered him in the IDTU an hour and a half or two hours had passed. Respondent said that during the test he would have been to Isaac's right side but that he would not have been looking at Isaac at all during the test. He said he would be looking at the camera and making sure that he got all the "verbiage from the instruction sheet" correct.

During the observation period, Respondent would have been seated about five feet away from Isaac and watching him. Respondent said that he would be making sure that Isaac did not belch, which would compromise the test. During that period, he would be focused on the motorist the whole time whereas during the test he would be looking at his sheet, his watch and other things.

Respondent testified that during the observation period, he remembered that Isaac had bloodshot eyes and a strong odor of alcoholic beverage on his breath. Without looking at his paperwork, he did not recall what he said about whether or not Isaac was steady on his feet. He did not talk to Isaac but Isaac did speak to other people. Respondent did not recall what Isaac said.

During the test, the only thing Respondent recalled Isaac saying was that he did not want to take the test, and his name. Respondent agreed that he did learn the location of the arrest because the sergeant told him as he was putting it in the book. When asked if the address was familiar to him in any way Respondent stated:

Until this whole thing happened a couple of days later where I was informed ultimately what happened subsequently after my stop was, nothing out of the ordinary jumped off. When they told me where the accident location was, there was nothing that really sat there and said, wait, I might have done a car stop an hour and a-half ago. So the location itself doesn't...

Respondent agreed that the location of the accident was not too far from the car stop, stating that it was relatively close. He further stated:

I learned the location of the accident that night, but as far as being relative to me conducting a car stop in that area prior to that, it was either the next day or the day after that, which would have been two days, that my delegate told me that, okay, listen you stopped somebody, they are looking at the tape and that's when the whole investigation started. But that night, knowing where the accident was, yeah, I knew where the accident was. I had to put it in the book and the intox, but as far as putting where the accident was and me conducting a car stop earlier to that, never really put---it never crossed my mind...On the day of, there was nothing, to me, nothing out of the ordinary with my car stops that night and the accident.

Respondent further explained that the arrest paperwork is filled out by the arresting officer. He said there are a total of five sheets, three are done by the arresting officer and two are done by the technician which would have been him. He explained that the sergeant who made the arrest asked for his assistance because she was not familiar with the paperwork. Respondent explained that all of the exams for the entire Borough of Queens, north and south, are done at the 112 Precinct. Respondent stated that he would have been responsible for conducting the examination for an arrest that occurred anywhere in Queens.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Disciplinary Case No. 2013-10873

Respondent has pled guilty to this case. The Department Advocate (Advocate) has recommended a penalty of five days with regard to this disciplinary case. Respondent accepts this penalty. This Court concurs that the loss of five vacation days is an appropriate penalty for this matter.

Disciplinary Case No. 2013-9558

Respondent has pled guilty in this matter and the only issue is punishment. The Department has asked that Respondent be dismissed from his position as a uniformed member of the service based on this case. Respondent asks for a lesser penalty.

The events that took place in the early morning hours of January 2, 2013 are not in dispute. Respondent was on duty and observed a vehicle enter the Long Island Expressway. It improperly crossed into a white striped area and later moved over the white lane lines. Respondent pulled the vehicle over. He turned on his dash camera and approached the vehicle. The driver, later identified as off-duty Police Officer Wesam Isaac, displayed a Department ID card and explained that he was on his way home from

work and was tired. Respondent asked if he was okay and Isaac replied in the affirmative. After this 26 second encounter, Isaac drove off. Respondent also left the scene and went to meet with his lieutenant to have his Activity Log signed.

Shortly after he left the scene, Isaac had an accident with another vehicle which resulted in property damage and what has been described to the Court as minor injuries. Isaac drove off without stopping as required by law. His vehicle broke down due to damage caused by the accident. Isaac was detained by a civilian who had witnessed the accident and was subsequently arrested and charged, among other things, with Driving While Intoxicated (DWI).

Isaac was brought to the test location in Queens. Respondent, who was the only on-duty member of service in Queens capable of performing an IDTU test, responded to the unit as well. Due to staff shortages, he was both the IDTU technician and the camera operator for Isaac's IDTU examination. As part of the protocol, Respondent waited 20 minutes to make sure that Isaac did not ingest anything. At that point, Isaac refused to take the breathalyzer test.

Three of the specifications deal with events at the time of the stop of Isaac on the Long Island Expressway. Specification No. 1 alleges that Respondent, "failed to conduct an investigation in that, having made a vehicle stop of a police officer who was driving erratically, did not evaluate said police officer for the possibility that he was driving while intoxicated." Specification No. 4 alleges that Respondent, "failed to take police action after stopping a motorist who exhibited signs of driving while under the influence to wit: he failed to conduct an investigation and therefore failed to make an arrest of a member of the service."

These two specifications charge essentially the same thing, which is that the 26 or 27 second stop of Isaac and the encounter Respondent had with him during that stop, was inadequate given his observations of Isaac's operation of his automobile. Further, given the observations Respondent made later that night of Isaac, had Respondent done an appropriate examination of Isaac at the time of the stop, he would have come to the conclusion that there was reason to believe that Isaac was impaired if not intoxicated and that an arrest would have been warranted.

Further, Specification No. 3 charges that Respondent, "failed to notify a Patrol Supervisor or Platoon Commander about a Member of the Service who was driving under the influence of an intoxicant," which indicates that had he done what he was supposed to do when he made the stop, he would have been required to notify a Patrol Supervisor.

The last charge, Specification No. 5 alleges that Respondent, "after responding to the 112th Precinct at approximately 0215 hours to perform an Intoxicated Drivers Test of a Member of the Service who was involved in a motor vehicle accident at approximately 0053 hours in the vicinity of the Queens Boulevard and the Long Island Expressway, failed to notify the Department and disclose that on the same date, at approximately 0050 hours, Police Officer Konkowski made a traffic stop of a Member of the Service in the vicinity of Woodhaven Boulevard and the Long Island Expressway for driving erratically."

This oddly worded specification intentionally does not mention Isaac by name. It simply alleges that even if Respondent did not recall that it was Isaac that he had stopped about two hours earlier that evening, he should have let a supervisor know that he had

stopped a member of the service at about the same time as the accident Isaac had been involved in and at a location that was not that far away from that accident.

While this failure to report is certainly some form of misconduct, it is clearly not the basis for the Advocate's recommendation that Respondent forfeit his position with this Department. Indeed, the Advocate in her argument urging dismissal, points to the Respondent's conduct in accepting Isaac's excuse that he was tired and allowing him to drive off.

But the Advocate also points to Isaac's conduct in becoming involved in an accident and then refusing to cooperate with a breathalyzer test. Isaac's conduct in leaving the scene of an accident and refusing to cooperate with a breathalyzer test was outrageous and as was discussed in this proceeding, I took a plea from Isaac² on his disciplinary matter. At that time, I disapproved the penalty recommended for Isaac by the Advocate as not being substantial enough. After review by the Police Commissioner, a significantly enhanced penalty was imposed. It is important however not to confuse Isaac's misconduct for that of this Respondent.³

Respondent's failure to make appropriate inquiry when he stopped Isaac is serious misconduct. It certainly leaves the appearance that the rules regarding drunk driving are not effectively being enforced against members of the service. But Respondent is not charged with intentionally allowing a drunk driver to continue driving and Respondent's explanation that intoxication is not the only reason for a driver to lose the lane (he cited

² Isaac pled guilty in court to Driving While Impaired and Leaving the Scene of an Accident, both of which are traffic violations.

³ On July 23, 2013, under Disciplinary Case No. 2013-8760, Isaac was offered a plea which involved the loss of 30 suspension days previously served and 15 vacation days for a total of 45 penalty days and one year dismissal/probation. The matter was subsequently renegotiated with a penalty of 30 suspension days previously served and 60 vacation days for a total of 90 penalty days and dismissal/probation.

sleepiness, cell phone conversations and dropped cigarette, as other possible causes)⁴ is credible.

Moreover, when I asked the Advocate if there was any case law to support the penalty recommendation, the Advocate acknowledged that there is none. Indeed a review of relevant cases indicates that a lower penalty has been imposed in previous cases for similar conduct.

For instance:

1. A thirteen-year lieutenant with no prior disciplinary record forfeited 20 vacation days for failing to follow procedure upon responding to an accident in which a Department vehicle being driven by an off-duty Deputy Inspector collided with a fire engine. Respondent failed to make the proper notifications. He also directed a transit sergeant to investigate the accident when it should have been investigated by the appropriate patrol supervisor, Case No. 83095/07, signed December 9, 2009.
2. A ten-and-a-half-year sergeant with no prior disciplinary record negotiated a penalty of 20 vacation days for leaving the scene of a vehicle accident involving a member of service who was possibly intoxicated before the patrol supervisor arrived, failing to conduct a proper investigation, failing to make an Activity Log entry and failing to notify IAB about the incident, Case No. 2011-5188, signed March 26, 2012.
3. A sixteen-year sergeant with no prior disciplinary record negotiated a penalty of 25 vacation days for failing to investigate whether an on-duty member of service, who was involved in an RMP accident, was under the influence of an intoxicant.

⁴ Respondent did not mention "texting" which, this Court notes, is a now a well recognized cause of distracted driving.

Additionally, he failed to promptly execute a Fitness For Duty Report for that member of service who smelled of alcohol, Case No. 8252/12, signed May 16, 2013.

4. A fourteen-year lieutenant with no prior disciplinary record negotiated a penalty of 15 vacation days for failing to conduct a timely investigation and failing to notify IAB. Respondent failed to direct an off-duty member of service to be transported to a Department facility for a breathalyzer test after being informed that the officer allegedly smelled of alcohol and was involved in a car accident. Respondent also failed to notify IAB about the incident, Case No. 2010-1383, signed March 13, 2012.

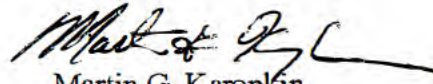
It is also worthy of note that no false documents were alleged to have been prepared or filed in this case. Indeed, when Respondent did the IDTU report, he noted that Isaac had signs of intoxication, making clear that he missed these during his earlier, perfunctory stop.

It should also be noted that Respondent, a thirteen-year member of the service, has hitherto had an unblemished record. On the Disciplinary Cover Sheet attached to this case file, Respondent is rated 10 out of 10, something that occurs very rarely. This level of performance is also reflected in his formal evaluations (see Confidential Memorandum attached hereto).

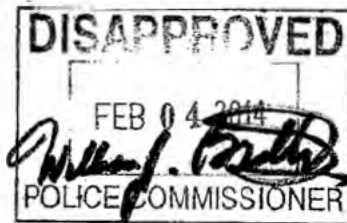
As I have said, the fact that Respondent allowed the appearance that the law with regard to intoxicated driving is not being enforced against members of the service and further that he allowed Isaac to drive off, merits a significant punishment. Consequently, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant

to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. In addition, Respondent should forfeit thirty-five (35) vacation days.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER NICHOLAS KONKOWSKI
TAX REGISTRY NO. 927044
DISCIPLINARY CASE NOS. 2013-9558 & 2013-10873

In 2010, Respondent received an overall rating of 5.0 "Extremely Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2008 and 4.5 "Extremely Competent/Highly Competent" in 2009. He has been awarded 26 medals for Excellent Police Duty and two for Meritorious Police Duty. [REDACTED]
[REDACTED]
[REDACTED]

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials